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HEARINGS

BEFORE THE

COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-FIFTH CONGRESS

FIRST SESSION

ON

S. 2717

A BILL PRESCRIBING RULES FOR THE GOVERNMENT AND
REGULATION OF THE LAND AND NAVAL FORCES
DURING THE PERIOD OF THE EXIST-
ING WAR WITH GERMANY

Printed for the use of the Committee on Military Affairs



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GOVERNMENT AND REGULATION OF MILITARY FORCES DURING WAR WITH GERMANY.

FRIDAY, AUGUST 31, 1917.

UNITED STATES SENATE,
THE COMMITTEE ON MILITARY AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, at 11 o'clock a. m., in committee room, Capitol, Senator Geo. E. Chamberlain presiding.

Present: Senators Chamberlain (chairman), Hitchcock, Fletcher, Beckham, Kirby, McKellar, Brady, Weeks, Wadsworth, New, and Frelinghuysen.

THE CHAIRMAN. The committee has under consideration S. 2717, a bill introduced by Senator Hardwick, who will address the committee on the bill.

Senator, we will be glad to hear you.

STATEMENT OF HON. THOMAS W. HARDWICK, SENATOR FROM GEORGIA.

SENATOR HARDWICK. Mr. Chairman and gentlemen, the bill that I have asked the committee to be heard on is known as Senate bill 2717, introduced by myself on the 2d day of August, 1917, and referred to this committee. The bill, without reading its formal beginning and heading, is as follows [reading]:

That for and during the period of the existing war with the Imperial Government of Germany the following rules and regulations for the government and regulation of the land and naval forces of the United States shall be followed and observed:

No person heretofore or hereafter drafted into the military service of the United States, pursuant to any law thereof, shall be ordered or required by the Commander in Chief of the Army and Navy, or by any other military or naval authority, to render military service over the seas, except in the Territories or insular possession of the United States, unless and until such person shall have first voluntarily consented to such foreign service.

Mr. Chairman, the subject covered by that bill and the object sought by it is one upon which I feel so strongly that I shall be forced to measure, and measure very carefully, the words I shall use in its advocacy.

First of all, let me say—although I deem it wholly unnecessary, so far as the members of this committee or any Member in the Senate is concerned, to make the statement—that no one who is a Member of either House of Congress is more earnestly anxious to prosecute, and to prosecute adequately, the war in which this country is engaged than myself. While I deeply regretted the necessity for declaring

war at the time we did declare it, in my judgment no other course was possible if we were to retain our own self-respect as a nation or to command the respect of other nations, simply and solely because Germany had fired upon our flag and had used her navy to murder American citizens who were peaceably and inoffensively engaged in commerce on the high seas, and who were in no way connected with the contest between Germany and her enemies.

At the time I voted for the resolution to declare war, I did so without the slightest hesitation, although with deep and real regret. I believed then and believe now that if the foreign affairs of this country had been properly managed and its neutral rights had been impartially asserted against all peoples alike there would not have been the slightest danger of this country being dragged into this war, nor any necessity for it. But the "water that has passed turns no wheel," and at the time we voted, when this session began, we were "up against it." We were in that situation well described by President Wilson in one of his books, where the President of the country had so managed its diplomatic affairs that Congress could do no more and no less than to occupy the position he had put the country in.

I have never thought that we were compelled, in order to prosecute this war adequately, to violate all of the traditional principles and to disregard the individual liberties of the American citizen; on the contrary I have always felt that the American citizen was a great deal more apt to wage this war successfully and with some spirit if he was treated as a freeman instead of as a serf, as a citizen and not as a subject—

(At this point the committee took a recess for the purpose of answering a call of the Senate, and thereupon resumed as follows:)

The CHAIRMAN. You may proceed, Senator Hardwick.

Senator HARDWICK. Mr. Chairman, when interrupted I was proceeding to say that I had always believed that the American people would fight this war more adequately and wage it more vigorously and successfully if the individual American citizen were treated as a freeman and not as a serf, in the preparations that were necessary to be made for its prosecution.

My own opinion was that our own quarrel required a vindication of our rights on the high seas, the vigorous use of the American Navy, and of a moderate amount of land forces such as would have been covered by the strength of the Regular Army and such of the militia as were willing to go—and I think that would have been practically all of them—and the number of volunteers that I believe this country would have readily furnished, would have been ample. Of course, if the proposal was that we were to engage in this war to the same extent that its European participants engaged in it, then the situation was radically different. But I did not entertain that view, or believe we ought to do so, because, while my own position is that I would be willing to spend every cent of money in this country and every drop of blood in America to vindicate American rights and to vindicate American honor, I am utterly unwilling to spend a single cent of American money or a single drop of American blood to change the boundaries of a single European nation or to change the form of government of any country on this earth, in Europe or elsewhere.

This democratization of the world is nonsense; it does not appeal to me. I think we are in far greater danger of losing our democracy at home in the chase of any such moonshine as that; and, for one, I believe in the policy of Washington and Jefferson, and Jackson and Monroe and Madison on this question, and not that of Woodrow Wilson. So that, entertaining these views, it was of course impossible for me to vote for the draft law—the “conscript law,” if you like that term better.

In the first place, I seriously doubted then, as I doubt now, its constitutionality; the power of Congress to enact it. The law rests, I assume, Mr. Chairman, on that clause of our Constitution which clothes Congress with the power to raise and support armies—of course, regular armies—and not on the militia sections of the Constitution. If it rests on the militia sections of the Constitution, then, according to the express provisions of those sections we would be utterly unable to use this drafted army except for the three purposes specified in them, namely, to execute the laws of the Union, to suppress insurrections, and to repel invasions.

The CHAIRMAN. May I interrupt you right there?

Senator HARDWICK. Certainly; I would be glad to have you do so.

The CHAIRMAN. If the power was limited as you now suggest, would it not have made it impossible for Congress to raise an army, if men saw fit to go into the National Guard; in other words, men could have avoided the national service by joining the National Guards of the several States?

Senator HARDWICK. Undoubtedly; and such was the intention of the framers of the Constitution. They recognized but two military forces of the United States: First, the Regular Army, which was raised by the use of money and nothing else, because that is the only instrument referred to in the language giving the power.

The CHAIRMAN. The Senator recognizes that an eminent judge in his own State has taken an opposite view very recently. The courts of Texas, Virginia, Alabama, Georgia, and some others took a diametrically opposite view during the Civil War.

Senator HARDWICK. Georgia did not.

The CHAIRMAN. I think it did.

Senator HARDWICK. No; I do not think it did. I am familiar with the decisions. The court of Texas did, and maybe those of some of the other Southern States, but the Senator must remember that in every one of those cases conscription was for service on the soil of this country and not for service over the seas and outside of the realm.

The Senator from Oregon suggests that if my view is sound Congress would have had no power to raise a Regular Army—by compulsion, you mean?

The CHAIRMAN. Or in any other way.

Senator HARDWICK. Or in any other way except by hiring them, because men might enlist in the National Guard. So they might; and it was not the intention of the framers of the Constitution, nor is it the idea on which this Government was formed and founded, in my judgment, that Congress should have had any such power as that. The Regular Army to be raised by voluntary enlistment—by the

use of money; and that it should not be paid for a period of longer than two years.

Senator KIRBY. You think, then, it was the intention that we should confine our military activities to this continent?

Senator HARDWICK. Undoubtedly. This Government was not made strong for the purpose of waging offensive warfare outside of this country—foreign warfare. Its powers were not constructed with that view and end; and it has remained for later-day statesmanship to develop that idea. No one of our fathers entertained it or professed it, or dared even suggest it.

When the Constitution clothed Congress with the power to raise and support armies, it provided that it might do so by the use of money, because immediately in that connection the expression is used, "but no appropriation of money to that use shall be for a longer term than two years."

I call the attention of the committee to the difference in the language when you come to the militia sections. The militia may be used for certain specified purposes that I have already adverted to. The Congress may "call forth" the militia. The words "draft" and "conscription" do not appear; and the only conscription, in my judgment, recognized in the Constitution of the United States, authorized by it or that can legitimately rest upon it is conscription of the militia forces and for the purposes specified therein.

Senator FLETCHER. May I ask whether the question was raised at all when we raised our Army in 1898?

Senator HARDWICK. It was not; we had no draft then. This is the first time in the history of this country—

Senator FLETCHER. I know; but we had a Regular Army.

Senator HARDWICK. I understand; but they were under volunteer contract in the Regular Army. There has never been any trouble about the Regular Army being sent anywhere, if the President elected to do it, because the men make that contract and agreement.

Senator FLETCHER. Do you think volunteers may be sent to France but the drafted men may not be?

Senator HARDWICK. Undoubtedly. That is what I believe is the truth.

The Senator from Oregon cites the decision of a district judge in Georgia. If a careful perusal of that opinion is either persuasive or convincing to the mind of the Senator, then he has much the advantage of me. It sounds to me more like a stump speech than anything else, and I say that with all due respect to the courts—

Senator FLETCHER. You refer to the decision of Judge Speer.

Senator HARDWICK. Yes. I say it sounds to me more like a stump speech than anything else. At any rate, there was nothing in the reasoning in the opinion that was either convincing or persuasive to my mind, nor in any one of the others I have seen. And the Senator must remember that the only particular matter to which Judge Speer's attention was directed was that this law is unconstitutional because it violated the thirteenth amendment to the Constitution of the United States. I unhesitatingly say I do not believe it is unconstitutional for any such reason as that. I do not believe that military service is slavery or involuntary servitude within the meaning of the thirteenth amendment.

Senator FLETCHER. But the Senator suggested that a man selected in the way provided by this law was in the category of a "serf."

Senator HARDWICK. Undoubtedly, they have been treated so, because their fundamental rights as Americans and as Englishmen have been violated and flagrantly disregarded, in my opinion. But the thirteenth amendment, it must be recalled, was framed to abolish slavery, and the language used was "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." The words "involuntary servitude" had reference only to a fear that existed in the minds of the men in Congress who wrote that amendment that the slaves of the Southern States might be virtually reenslaved by a system of debt devices, and the debates in Congress at that time prove it. So that I say, in my opinion, the thirteenth amendment has no relation to this question, and the opinion of all these judges as to whether or not this law is constitutional because it conflicts with that amendment is neither illuminating nor do those decisions prove anything important to the question really at issue.

The CHAIRMAN. Let me ask you this, Senator: Assume, for the sake of illustration, that the United States had a war with Mexico, as in 1845, and it was not a popular war, and men did not care to enlist, or would not enlist in the Regular Army—you could not draft them for service in Mexico, and men might even avoid draft by going into the National Guard of the several States—would we be entirely prevented in this way from sending an Army to Mexico for any purpose, even for the protection of our own country?

Senator HARDWICK. Mr. Chairman, you have raised a very interesting question. Our courts have held that even the militia can be sent outside the realm, directly across the boundary, when the object is to repel an attack that is about to be made by a force that is then forming, and where the danger of such invasion is pressing and imminent.

The CHAIRMAN. How can you make a distinction between across the boundary line and across the sea if, as has been intimated in quite a number of instances, the Germans had really plotted to divide this country with the Mexicans and Japanese on the south, and, according to Gerard, they had before this war was declared by America, made arrangements, or had discussed, with England the propriety of violating the Monroe doctrine?

Senator HARDWICK. The Senator is injecting a lot of extraneous things here. I am pointing out what the distinction is. Read the decision of the courts and you will readily see it. You can not send them 3,000 miles beyond the sea on any such pretext. If so, the Constitution is destroyed. If the doctrine of the chairman is sound, you can send them to the ends of the earth and back again—wherever you pleased.

The CHAIRMAN. I think you could in a war like the one now in progress.

SENATOR HARDWICK. Then what do those decisions mean? Under the Constitution you can send the militia across the seas?

The CHAIRMAN. Not the militia across the seas.

Senator HARDWICK. Those provisions in relation to the militia would be utterly destroyed if the Senator's view rests on any sound logic.

The CHAIRMAN. If the National Guard of the several States is called into the Federal service, then they become Federal troops.

Senator HARDWICK. The law written on that subject is not worth the paper it is written on in any court.

The CHAIRMAN. Of course, that is merely your opinion.

Senator HARDWICK. I am giving you my opinion.

The CHAIRMAN. And my opinion differs entirely from yours.

Senator HARDWICK. And I am just as strong in my opinion as mortal can be. You can not change the Constitution of the United States, add to or subtract from it, by any statute; and the obligation that you make these men take, in transferring their commands from State to National service in no way alters or changes their constitutional obligations and rights.

Senator KIRBY. That is recognized largely, too, by requiring those who engaged in the Mexican trouble to reenlist and swear in again.

Senator HARDWICK. Of course, enlist and disband and enlist as Federal forces that are not militia.

Senator BRADY. Under his plan they would not have to reenlist?

Senator HARDWICK. No.

Senator BRADY. That is, they could stay in the service?

Senator HARDWICK. They take a double oath and are a part of the State militia and of the national forces at the same time, and yet I say to you that I have not the slightest doubt that any court in this country is bound to hold that that procedure is unconstitutional.

Senor BRADY. Before you sit down I want to ask you a few questions.

Senator HARDWICK. Will you let me finish the main thread of my statement, unless it is right on this point?

Senator BRADY. I will be glad to wait.

Senator HARDWICK. I will be glad to have you do it then.

When power was conferred on Congress to raise the Regular Army, money was only named as the instrumentality that might be employed to do so. When power was conferred on Congress to call the national militia to the defense of the country, the words "equivalent to conscription and draft calling forth" were used, entirely different language.

Mr. Chairman and gentlemen, it is a part of the inherent constitutional rights of both Englishmen and Americans, as old as Anglo-Saxon civilization itself, that men shall not be required to render military service outside of the realm and across the seas, without their own consent. It was a law of Saxon England from King Alfred's time; it was the law of Norman England in King Richard's time and in King John's time, and the sixteenth chapter of the Magna Charta expressly affirms it.

From Stubb's Constitutional History of England, volume 1, page 547-548, I read [reading]:

The history of the next year, 1198, furnishes two events of great importance. In a council of the barons held at Oxford the archbishop laid before them a demand made by the King that they should provide him a force for his war in Normandy; 300 knights were to be furnished, each to receive 3 English shillings every day and to serve for a year. There can be no doubt that the demand was unprecedented, whether we consider the greatness of the

amount, £16,425, or the definiteness of the proposition. But neither point caused the actual objection. The bishop of Lincoln, Hugh of Avalon, the Carthusian friend of Henry II, declared that he would not assent to the grant. In vain the archbishop, and the treasurer the bishop of London, pleaded the royal necessities; the independent prelate declared that the lands of his church were bound to render military service within England and there only; he had, he said, fought the battle of his church for 13 years; this impost he would not pay; rather than do so he would go back to his home in Burgundy. To the archbishop's further discomfiture, the example of Hugh was followed by Bishop Herbert of Salisbury, who had had the regular ministerial training and was closely connected with the ruling officers of the exchequer. The opposition was so far successful that the archbishop withdrew the proposal and shortly after resigned. This event is a landmark of constitutional history; for the second time a constitutional opposition to a royal demand for money is made, and made successfully.

From the *Chronicles of Jocelin of Brakeland* (A. D. 1198), edited by Sir Ernest Clarke (p. 128), I read [reading]:

King Richard commanded all the bishops and abbots of England that for every nine knights of their baronies they should make a tenth knight, and that without delay those knights should go to him in Normandy, with horses and arms, in aid against the King of France. Wherefore, it behoved the abbot to account to him for sending four knights. And when he had caused to be summoned all his knights, and had conferred with them thereon, they made answer that their fees, which they had holden of St. Edmund, were not liable to this charge, neither had they or their fathers ever gone out of England, although they had, on some occasions, paid escuage by the King's writ.

Now, I read next from one of the standard works—a very modern one, too—on this question, *Farrer's Military Manners and Customs*, pages 264–265, where he discusses the constitutional doctrine and also the present situation.

Senator BRADY. That is interesting. I hope the Senator will furnish us with that information.

Senator HARDWICK (reading):

But it is evident that, except with a reservation limiting a man's service to a just national cause, Bullinger's argument will also apply to the case of a hired soldier of his own country. The duty of every man to defend his country in case of invasion is intelligible enough, and it is very important to notice that originally in no country did the duty of military obedience mean more. In 1297 the high constable and marshal of England refused to muster the forces to serve Edward I in Flanders, on the plea that neither they nor their ancestors were obliged to serve the King outside his dominions, and Sir E. Coke's ruling in Calvin's case, that Englishmen are bound to attend the King in his wars as well without as within the realm, and that their allegiance is not local but indefinite, was not accepted by writers on the constitution of the country. The existing militia oath, which strictly limits obedience to the defense of the realm, covered the whole military duty of our ancestors, and it was only the innovation of the military contract that prepared the way for our modern idea of the soldier's duty as unqualified and unlimited with regard to cause and place and time. The very word "soldier" means originally stipendiary, his pay, or "solde" (from the Latin solidum), coming to constitute his chief characteristic. From a servant hired for a certain task for a certain time, the steps were easy to a servant whose hire bound him to any task and for the whole of his life. The existing military oath, which binds a recruit and practically compels him as much to a war of aggression as of defense at the bidding of the executive, owes its origin to the revolution of 1689, when the refusal of Dumbarton's famous Scotch regiment to serve their new master, William III, in the defense of Holland against France, rendered it advisable to pass the mutiny act, containing a more stringent definition of military duty by an oath couched in extremely general terms. Such has been the effect of time in confirming this newer doctrine of the contract implied by the military status that the defense of the monarch "in person, crown, and dignity against 'all enemies,'" to which the modern recruit pledges himself at his attestation, would be held to bind the soldier not to withhold his services were he called upon to exercise them in the planet Mars itself.

Let me interpolate this is an involuntary contract of soldiers, it appears to me.

Here is the conclusion of this. [Reading:]

Hence it appears to be an indisputable fact of history that the modern military theory of Europe, which demands complete spiritual self-abandonment and unqualified obedience on the part of a soldier, is a distinct trespass outside the bounds of the original and, so to speak, constitutional idea of military duty; and that in our own country it is as much an encroachment on the rights of Englishmen as it is on the wider rights of man.

Mr. Chairman and gentlemen, I have no doubt, as far as I am concerned, it is utterly contrary to the Constitution of the United States, that it utterly transcends the power of Congress, and that it utterly violates the immemorial principles of English and American liberty to require of any man that he shall render involuntary military service outside of the realm and beyond the seas. It was for that reason, entertaining those views earnestly and sincerely, that I was unwilling to vote for the original conscription act, and it is for that reason I offer this bill. I would go as far as any Senator on this committee or on any other committee, as anybody in this country, in the Senate or outside of it, to fight an American war that was nothing more than an American war.

I hope that our country will adopt that policy and avoid the entangling alliances against which Washington warned. For an American war and that alone we can get all the men we want to send to France to prosecute it without compelling anybody to go against his will, and instead of this country being at heart, in its inmost soul against this war, as it is now being prosecuted and urged, in my opinion, and against the policies that are being carried out in its prosecution; and instead of the existence of that tremendous under-current that everyone knows about in every one of our States on these subjects, I believe we would have had the united and devoted support of the entire American people, if we had observed the traditions of English liberty, if we had said to these people, "All of you who will volunteer to engage in this just quarrel of your country." If not, then it follows that either the war ought not to have been declared at all or that the American people are no longer fit to be a free and independent Nation, because if the war is a just one—and as I have said before, I think it was—then I do not see how anyone can say that the American people would not support it adequately, although people just as patriotic as any of us. Mr. Chairman, might not think that adequate support of it required that we send millions of men to Europe, either because we wanted to establish European boundary lines or European forms of government, or because of some weird, fantastic, grotesque and absurd fear that if we did not "go after Germany in Germany" Germany would go after us here.

I say millions of honest men do not feel that either one of those things are true, and therefore do not feel we are bound to take Russia's place if she falls down in this contest—

Senator BRADY (interposing). I fear Russia is going to fall down.

Senator HARDWICK. I hope the Senator is wrong. It means an awful thing for us if she does, because they do not think that it does not mean they are not as good Americans as anybody and just as patriotic. I think my own State is probably, with the exception of one State, and it is about equal to that what might be termed, without

offense to other Commonwealths, the purest blooded American Commonwealth of this Union, having about one-half of 1 per cent only of foreign-born citizens within its limits. Our people are of English, Scottish, and Irish ancestry; there are no Germans. I think there are less than 200 citizens of Georgia who were born in Germany or descended from people who were born in Germany. There is no pro-German sentiment there, but there is a tremendous sentiment there that it would have been just as well in waging this war to have paid some attention and to have had some regard for the ancient and imminemorial rights of American citizens, and I think one of those right is represented in this bill.

The CHAIRMAN. Will the Senator allow me to interrupt him for a question?

Senator HARDWICK. With pleasure.

The CHAIRMAN. You speak of a German invasion of this country, or a German war with this country, if you please. Is it not true before war was declared by the American Congress that Germany had proposed to Mexico and to Japan through its authorized agents some division of American soil between the Mexican and Japanese Governments?

Senator HARDWICK. The Senator from Georgia, Mr. Chairman, is, I think, as familiar with that correspondence and incident as anyone. I can not, of course, be put in the situation of being an apologist for Germany. I do not feel that way, and I do not want what I am going to say to be understood that way, but I have always thought that the importance of that incident was grossly exaggerated. It is true something authentic like that was discovered. But if this country was about to engage in a war with any nation I expect that if its secret archives could be searched and all its departments gone through with it might be found that we were making whatever plans our Government officials thought were wisest or necessary to combat that other power in the event we had to fight it.

The CHAIRMAN. Why, Zimmerman admitted that he wrote that note to the German minister to Mexico.

Senator HARDWICK. Well, what is there unusual in that if he did? His defense was, as I remember it—although I am not in the position of being his apologist in any way—that that was merely an outline of what the German plan was in the event the United States made war upon Germany. That is my recollection of it.

The CHAIRMAN. Ambassador Gerard, as is currently reported—I do not vouch for its truth—says the question was being discussed in Germany, before the war began, of having Great Britain unite with Germany in order that they might form an alliance to destroy the Monroe doctrine and practically take charge of Mexico and South America.

Senator KIRBY. I would like right there to ask a question.

Senator HARDWICK. Let me answer that, please.

Senator KIRBY. I would like to know what business an ambassador has of prostituting the public service to the making of a little money for himself by writing a book for sale and revealing State secrets, as an inducement thereto.

The CHAIRMAN. I do not think that that was revealing State secrets.

Senator KIRBY. I am not talking about that. I am talking about all this other stuff, information he acquired while he was in Germany in a diplomatic capacity, that is being published in the press here to appear in book form as of particular public intent for his own private benefit.

Senator HARDWICK. It is unbelievable—

Senator KIRBY. That is a peculiar condition to me.

Senator HARDWICK (continuing). That Ambassador Gerard could have received, under those circumstances, as outlined by the chairman, any genuine or official communication from official sources, about what they were plotting against this country. So that if he knows anything about or heard anything about it was probably mere gossip or rumor in that country, and I have no doubt any German could have found at that time, in the United States, plenty of people discussing what we were going to do with Germany should we get into war with her, when the Lusitania was sunk or when Belgium's neutrality was violated, and in many other subsequent situations. So, I do not know that the Zimmerman correspondence amounts to a great deal—

The CHAIRMAN. Suppose this bill of yours were to become a law. What would be the effect on the Army as organized now and what would be the effect upon the part we are taking and may be compelled later to take in the war?

Senator HARDWICK. I am very glad to tell the Senator. The effect would be that this large army that you are raising by draft would be kept in this country, trained and prepared to defend this country against these imaginary dangers that you gentlemen assert are so real, so that if it should turn out you are right about it and that those of us who think otherwise are wrong, we would have an army left in this country to use, if necessary, to defend our own country and our own soil. That would be the result of it, and we could send—we have something like 300,000 soldiers in the Regular Army, have we not?

The CHAIRMAN. I do not know just the number now.

Senator HARDWICK. That is substantially right, is it not? Something like 500,000 in the Regular Army, whatever the figures are—I wanted to be corrected by the chairman if my statement was not substantially correct—we can send as big an army as we ought to send to Europe without a single drafted man being sent; and that is what I would like to see done—

Senator BRADY. Assuming that the bill under consideration should be passed, or that a majority of the committee and that a majority of the Senate at any time thought this bill should become a law, do you think it would be the proper thing to pass this bill at this time?

Senator HARDWICK. Undoubtedly, before they are sent, and not afterwards.

Senator BRADY. If it should have been enacted into law, should it not have been enacted before war was declared?

Senator HARDWICK. No; not a bit of it. I never had any idea in this world that any living, mortal American statesman who had any acquaintance with English or American constitutional law or the principles of English and American liberty would undertake to draft men to serve in France. And yet I was in favor of declaring the war.

Senator BRADY. What effect does the Senator think the passage of this bill would have on the present war?

Senator HARDWICK. I will tell the Senator, I think we would be able to send an army of something like 500,000 or a million men without drafting, and that is as much of an army as we ought to send.

Senator BRADY. What would you do with the men who are over there now?

Senator HARDWICK. Over there now?

Senator BRADY. Yes. Send for them to come back?

Senator HARDWICK. I would send more to reinforce them. We only have a few thousand now.

Senator BRADY. I understand; but if this bill applies to the men in America it should apply to those now in France.

Senator HARDWICK (interposing). I just tried to point out to the Senator from Oregon that we had something like 300,000 Regulars and 400,000 or 500,000 Militia, most of whom, I think, would be perfectly willing to go, and we could get, undoubtedly, many volunteers, and I have no doubt we would be able to recruit by perfectly constitutional methods, that do not violate American traditions an army of 1,000,000 men for service abroad.

Senator NEW. As to the effect this would have at this time, does not the Senator realize that right now we are making up an organization composed of men under this draft, part of whom would necessarily have to be taken out of those regiments if this bill were to pass, and we ought to stop to think of the confusion that would create.

Senator HARDWICK. I do not think that is a very great difficulty. The Senator means men drafted for service in the Regular Army, and to fill up the ranks of the Militia?

Senator NEW. No. You would have to ask every man as he came up whether he was willing to go to France. That question would have to be addressed to every man who has now been drafted and the willing separated from the unwilling.

Senator HARDWICK. That is exactly what ought to be done.

Senator NEW. And thereby limit just so much our effectiveness in the war.

Senator HARDWICK. What are those things in comparison with the fundamental and ancient rights of the American people about this thing, if I am right on this proposition? What is the relative importance of a little work of readjustment, if what I am contending for is right?

Senator KIRBY. How long do you think this drafted army will be getting ready for service in France—at least a year?

Senator HARDWICK (continuing). They could make all those readjustments in a reasonable time while the training is in progress.

Senator NEW. I do not think it would be a year, but I think it would be removed to an indefinite period.

Senator BRADY. I would like very much to follow the line of thought I have suggested and ask a few questions of the Senator, for the reason I am perplexed as to just exactly what his purposes are.

Senator HARDWICK. I am afraid I can not make it plain to the Senator if I have not done so already. I will try, if the Senator will indicate precisely what point he has in mind.

Senator BRADY. I am trying to get down to a practical basis. Let us presume we passed this law at this time.

Senator HARDWICK. Yes.

Senator BRADY. We have 1,000,000 men in the service at this time.

Senator HARDWICK. I doubt, Senator, whether there are that many.

Senator BRADY. We will put it in round numbers; 1,000,000 men, that is, the National Army.

Senator HARDWICK. We have not organized as yet the National Army—the draft army. They are not yet in the military service of the United States.

Senator BRADY. Two hundred thousand of them passed examination and 1,000,000 will soon be enrolled in the Army.

Senator HARDWICK. I know, but they are not now in the service.

Senator BRADY. Several hundred thousand have been accepted.

Senator HARDWICK. They are not a part of the military forces of the United States to-day; but that is neither here nor there. The facts can not be disputed.

Senator BRADY. What would be the situation if each and every one of those men were asked the question, "Do you want to go to France?"

Senator HARDWICK. I might keep him in the service of the country even if we never sent him outside of this country.

Senator BRADY. You would give him the option of going abroad or serving at home?

Senator HARDWICK. I would not send any of them abroad, if you want to know what my idea is, whether willing or not.

Senator BRADY. At this time?

Senator HARDWICK. No: not at this time nor at any other time.

Senator BRADY. Do you think we can win this war by not sending our Army abroad?

Senator HARDWICK. I think we will just about as quickly as the other way.

The CHAIRMAN. The Senator speaks of favoring the prosecution of this war within the lines laid down by him, but does not the Senator know that the People's Council of America for Democracy in Times of Peace and the antimilitary, individually and as organizations, are appealing to the Senate committee to report the resolution of the Senator; that is, those who oppose the war, and are petitioning Senators to support it?

Senator HARDWICK. Mr. Chairman, the Senator from Georgia, of course, can not control either the views or the positions of citizens of this country who may elect for one reason or another to oppose or favor the bill he advocates.

The CHAIRMAN. I mention that to show that those who oppose the war altogether favor the resolution because they feel it would accomplish their purpose and possibly bring defeat.

Senator HARDWICK. Undoubtedly; I can see why they favor it, because it does not mean participation in this war to the same extent that some of you gentlemen have in mind, and it means participation in this war on a very different plan and, I think, for an entirely different purpose than that you have in mind.

The CHAIRMAN. Would it not mean, if your purpose was followed out, the nonparticipation of the United States in the present European war?

Senator HARDWICK. Senator, when this war was declared 99 per cent—I won't say that, but a great percentage, in my judgment, of

the people in this country, a majority of them—believed it was to be largely a naval war.

Senator FLETCHER. Would not the Senator's plan result in our having two armies, one draft and one voluntary?

Senator HARDWICK. Undoubtedly, although I would never have had a drafted army, as the Senator knows, as I voted against it.

Senator HITCHCOCK. Of course, this Congress is not going to repeal the draft law?

Senator HARDWICK. I do not expect so.

Senator HITCHCOCK. It is an issue in the House of Representatives. Suppose the people return Representatives the majority of which are strongly in favor of retaining the present policy. What would be your attitude then?

Senator HARDWICK. What would be my attitude? I would still be in the minority, as I am now; and it would be impossible for me to be here unless the people of my State approve that position.

Senator HITCHCOCK. What would be the situation if the majority of the people of the United States indorsed the attitude of the administration.

Senator HARDWICK. There would be but one thing the Congress could do and that would be to carry out the instructions and the mandate received from the people; that is popular government.

Senator HITCHCOCK. Is not that the proper way?

Senator HARDWICK. I think it will be settled that way; that is the forum in which it will be and must be settled, and its speedy settlement is at hand.

Senator FLETCHER. Does not the Senator believe that after we have declared war and a state of war exists and we are actually engaged in that war we ought to have due consideration for the people who have the responsibility of conducting the war, and if they say we ought to do this, that, and the other, aught we not respect their judgment?

Senator HARDWICK. Every public man will have to set up his own standard about matters of that sort. There are a great many people who say we ought to do this or that or the other because the President or somebody else, perhaps an Army officer, says so.

Senator FLETCHER. I am speaking about men who are charged with the high responsibility.

Senator HARDWICK. I am speaking about men charged with the duties that the Senator from Florida and myself are both charged with.

Senator FLETCHER. We are not Commander in Chief of the Army and Navy.

Senator HARDWICK. No; and I will say to the Senator what I said to the Senator on the floor of the Senate when this question was up, that I feel obligated as a patriotic citizen of America as well as a sworn Senator of the United States to follow the military authorities about all matters purely military. I would no more undertake to try to meddle with how a campaign should be waged or to plan a campaign than to attempt any other impossible thing. That is the business of the generals and admirals of the Army and the Navy. But when it comes to the matter of great civic policies—and this is a great civic question—

Senator FLETCHER (interposing). Is not this merely a matter of conducting the campaign?

Senator HARDWICK. No; the campaign is prosecuted by your Army after it is raised. Why, then, did the Constitution confer upon Congress instead of upon the War Department or the President the power to raise armies? This is, in fact, a great civic and social question.

Senator FLETCHER. Would not the passing of a resolution of this kind practically result in the withdrawal of the United States from the war?

Senator HARDWICK. Certainly not. The Senator has just come in and did not hear my previous remarks. It would simply mean we did not propose to fight for some of these European causes of quarrel. It would mean that we propose to do in 1917 what we did in 1812. We fought a war in 1812, against whom? Against Great Britain, and at that time Great Britain's antagonist was Napoleon, who might be said to be the prototype of the present Kaiser, and although we were in a war with Great Britain in 1812, and about our rights on the high seas, we did not then go to France and lay our hands in the hands of France, and say, "We make your quarrel ours. We will prosecute this war as long as you want us to prosecute it, and we will shed our blood as long as you want us to shed it."

Senator BECKHAM. Does the Senator consider that the extent of the ocean then meant a much greater difference in warfare between this country and European countries than it means now?

Senator HARDWICK. I do not think it makes a great difference. It is true steam and electricity and all the modern inventions have brought people closer together, but it has also made people better able to defend themselves. Let me say to the Senator from Kentucky if England, with the undisputed mastery of the sea, has been unable to invade Germany, 50 miles away, with her great navy, simply and solely because Germany has so mined her coast and has so fortified her coast that the English vessels would have been blown up before they got there, I have no doubt in my own mind that the coasts of this country can be so fortified that any foreign power can not invade this country or even attempt it.

The CHAIRMAN. You stated a while ago if the diplomatic negotiations of this country had been properly carried on that in all human probability it would not have been necessary to declare war. Wherein might that have been done so as to avoid the question of war?

Senator HARDWICK. I think that is a fair question, although I would have preferred you did not ask it.

In the beginning of this war President Wilson issued a proclamation urging us to all remain strictly neutral, saying, "This quarrel is none of ours, and these people are all our friends." He advised us against even speaking passionately about it, and the country responded to his appeal. In fact, the country a little later reelected him because "He kept us out of war." The first violation of our neutral rights was by the allies, Great Britain particularly. Great Britain declared the North Sea closed. Great Britain undertook to do a thing absolutely without parallel in the history of international intercourse between friendly powers. She undertook to say to the United States, although she was at peace with both the United

States and Holland—we will use Holland for the purpose of illustration—"We will regulate by orders in council and by the actual force of our navy what merchandise you can send, how much commerce you can have, and how much trade you can have with Holland or with Norway or Sweden or any one of these powers that are at peace with all of the belligerents and also at peace with the United States." Her justification for doing that was that she could not stop these goods if they once got to Holland from getting into Germany from the other side. That was no justification at all in international law. It was her business to stop it, and not ours. We had a right to trade as we pleased with Holland without Great Britain's control or interference.

I thought then, as I still think—the Senator must do me the credit to recall that I preferred not to go into that; it was past—it is thrashing out old straw. If we had then forcefully said to Great Britain, and we did pretend to say it, in a very mildlike and ladylike manner, "You haven't any right to say what we shall sell to Holland." nor to say, "We will control your trade by orders in council and by our navy." We would not have had any war. All we would have had to say was. "If you keep this up for 90 days, we will declare an embargo against you and the allies." That would have forced them to terms.

The CHAIRMAN. Do you not think the attitude of neutrality was maintained until Germany violated her promise to abstain from submarine warfare?

Senator HARDWICK. I do not, for the very reason, and in the very manner I have pointed out.

Senator MCKELLAR. Do you not think it would be not only a menace to our own liberties in this country but a menace to our country itself if we permitted Germany to win this war?

Senator HARDWICK. I take it that Germany is not going to win this war. Besides, they are not coming over here after us. You do not believe that?

Senator MCKELLAR. I do not.

Senator HARDWICK. I do not, either.

Senator MCKELLAR. I believe if she wins this war under the circumstances now, America will get the hot end of it before the war is over.

Senator HARDWICK. If you believe that sincerely, of course, you have a right to say it. I believe the opposite very sincerely.

Mr. CHAIRMAN. Not only that, but even after we had failed to assert our neutral rights impartially against every belligerent who violated America's neutral rights—and it ought to have done against them all—we would have had no trouble in enforcing those neutral right, even then, if we had passed resolutions to keep American citizens from riding on ships under belligerent registry which were engaged in the carriage of actual contraband of war, we would never have had this war.

Senator WADSWORTH. May I ask if that resolution would not have been surrendering neutral rights?

Senator HARDWICK. Let me set the Senator right. The Senator would have me say "which were engaged in the carriage of contraband of war," whereas I said "actual contraband of war."

Senator WADSWORTH. The Senator remembers that about everything eaten or worn by man is now contraband.

Senator HARDWICK. I said "actual contraband." There is a real distinction between actual contraband of war and general contraband. Let me illustrate what I mean by that. Here are two men shooting at each other across this room. We are all on friendly terms with both of them. Say Representative Gordon and myself are engaged in such a combat. If either of you gentlemen, although not parties in any way when it began, undertook to bring either one of us a loaded pistol or cartridges, with which to carry on the affray, you might expect to be shot down because you would constitute yourself, not only in law but in the morals, a party to that combat when you did it. Undoubtedly there was some use of American citizens for selfish purposes along those lines, and I believe that giving even the slightest manifestation to the world that while we did not propose to surrender any real right, yet we did propose to have a lot of designing adventurers drag us into it and would have done a great deal to prevent it. But, as the Senator said, that is neither here nor there. We are into it; we did not do these things. Of course, the people may well ask the question why that was not done and may well wonder how it all happened and why.

The CHAIRMAN. Is there not this distinction between the attitude of Great Britain, is there not this difference, that even admitting that Great Britain was violating the rules of international law, yet in her violation of it there was no destruction of human life—men, women, and children? Germany promised us to desist from ruthless submarine warfare, even after the loss of the *Lusitania*, and yet later she violated those obligations, and in the meantime, during the existence of her promise, she was preparing and building submarines to violate it.

Senator HARDWICK. Undoubtedly. I have always felt and recognized that distinction myself. But I have never felt that because one man tried to murder me that ought to license another man to rob me. If we had resisted the robber, we would never have been robbed and no one would have tried to murder us. If we had stopped the first infractions of our neutral rights and of our sovereignty as a great people, and when they first occurred, it is my opinion—and I expressed it candidly to you gentlemen—we would not have been up against this other situation at all.

Mr. Chairman and gentlemen, I thank you.

Senator FRELINGHUYSEN. I understand the point you make, the object of this bill is that under the thirteenth amendment the draft law is "involuntary servitude"?

Senator HARDWICK. No, sir; I never dreamed of that.

Senator BRADY. He explained quite fully he did not take that view.

The CHAIRMAN. If there is nothing further, the committee will now adjourn.

(Thereupon the committee adjourned subject to the call of the chairman.)





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